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Spin Master Ltd. and Spin Master, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPIN MASTER LTD. and SPIN MASTER, INC.,

Plaintiffs

v.

ACIPER, ADA TOYZ, AHAHOO, AHIROT,
AILA STORE, COLORFULWORLD6,
CONTROL FUTURE DIRECT, DEWEER,
ELEMUSI, ETCBUYS, FINALBASEDIRECT,
FLYGLOBAL, FREE TO FLY, FUNDOM,
GOSEAR, GOTECHOD DIRECT, JEICY,
JINRONG HE, JJS TOYS, JOYFUN, JOYJAM,
JSCOUT, JZD-US, KINGBOT-US, LALAGO,
LANKEE, LIBERTY TRADING GB, LYNEE
TOYS, MAGNETICSPACE, MAYZO,
MI.MENG15, MXTRADE, NAMIGE, NEIL-US,
NEW-LOOK, REIMOTKON-US, ROOYA
BABY DIRECT, SGILE, SIKAYE TECH INC,
SUUKAA, TABPOLE DIRECT,
TAIYUANSIXINGHUALINGQUWANGYAN
JUNTIYUYONGPINGDIAN, TOCH DIRECT,
TOTOLA TRADING INC, TOY CHEF, TSWA,
TULAS, UM-S, UNIDARGON, V-BEST,
WALSONTOP, WO FEI, YEYOJOY, YAUDI
DIRECT and YUANBO,

Defendants

Civil Case No.: 19-cv-6949

~~PROPOSED~~
**ORDER DISSOLVING
TEMPORARY RESTRAINING
ORDER APPLICABLE ONLY TO
DEFENDANT JSCOUT**

GLOSSARY

<u>Term</u>	<u>Definition</u>
Plaintiffs or “Spin Master”	Spin Master Ltd. and Spin Master, Inc.
Defendants	ACIPER, Ada Toyz, AHAHOO, AHIROT, AILA Store, Colorfulworld6, Control Future Direct, DEWEER, Elemusi, ETCBUYS, FinalBaseDirect, Flyglobal, Free to Fly, FUNDOM, Gosear, GotechoD Direct, Jeicy, jinrong he, JJs Toys, Joyfun, Joyjam, Jscout, JZD-US, KINGBOT-US, Lalago, lankee, Liberty Trading GB, Lynee toys, Magneticspace, Mayzo, Mi.meng15, MXTRADE, namige, Neil-US, new-look, REIMOTKON-US, ROOYA BABY Direct, SGILE, Sikaye tech Inc, SUUKAA, tabpole Direct, taiyuanshixinghualingquwangyanjuntiyuyongpingdian, Toch Direct, Totola Trading Inc, Toy Chef, TSWA, Tulas, UM-S, UniDargon, V-Best, Walsontop, Wo Fei, YEYOJOY, Youdi Direct and YuanBo
Amazon	Amazon.com, a Seattle, Washington-based, online marketplace and e-commerce platform owned by Amazon.com, Inc., a Delaware corporation, that allows manufacturers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their retail products, which, upon information and belief, primarily originate from China, directly to consumers worldwide and specifically to consumers residing in the U.S., including New York
Epstein Drangel	Epstein Drangel LLP, counsel for Plaintiffs
New York Addresses	60 East 42nd Street, Suite 2520, New York, NY 10165; 244 Madison Ave, Suite 411, New York, NY 10016
Complaint	Plaintiffs’ Complaint filed on July 25, 2019
Application	Plaintiffs’ <i>Ex Parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants’ Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on July 25, 2019
Harrs Dec.	Declaration of Christopher Harrs in Support of Plaintiffs’ Application
Yamali Dec.	Declaration of Danielle S. Yamali in Support of Plaintiffs’ Application
Spin Master Products	Innovative children’s lifestyle products and toys under Plaintiffs’ own well-known brands, including Twisty Petz, Flutterbye Fairy, Bunchems and Hatchimals, as well as under their licensed properties, such as Paw

	Patrol and Air Hogs
Racer Products	Plaintiffs' Air Hogs Zero Gravity Laser Racer, which features award-winning patented technology that permits the car to drive along the floor, up the walls, and even upside down
Racer Product Marks	U.S. Trademark Registration Numbers: 3,267,725 for "WALL CLIMBER" for goods in Class 28, with a constructive date of first use of May 27, 2005; and 3,210,297 for "ZERO GRAVITY" for goods in Class 28, with a constructive date of first use of June 23, 2005
Counterfeit Products	Products bearing or used in connection with the Racer Product Marks, and/or products in packaging and/or containing labels and/or hang tags and/or manuals bearing the Racer Product Marks, and/or bearing or used in connection with marks that are confusingly similar to the Racer Product Marks and/or products that are identical or confusingly similar to the Racer Products
Infringing Listings	Defendants' listings for Counterfeit Products
User Accounts	Any and all websites and any and all accounts with online marketplace platforms such as Amazon, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as Amazon.com, Inc., Amazon Payments, Inc. ("Amazon Pay"), PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), PingPong Global Solutions, Inc. ("PingPong") and other companies or agencies that

	engage in the processing or transfer of money and/or real or personal property of Defendants
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly, by Amazon, such as Amazon.com, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise

WHEREAS, Plaintiffs having moved *ex parte* on July 25, 2019 against Defendants for the following: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service; and 5) an order authorizing expedited discovery;

WHEREAS, the Court entered an Order granting Plaintiffs' Application on August 1, 2019, and ordered Defendants to appear on October 25, 2019 at 10:00 a.m. to show cause why a preliminary injunction should not issue;

WHEREAS, on August 16, 2019, the Court issued an Order extending the TRO through the date of the OSC Hearing;

WHEREAS, by motion dated September 4, 2019, Defendant Shenzhen Yongli Hongtai Investment Development Co., Ltd., d/b/a Jscout moved, pursuant to Fed. R. Civ. P. 65(b) for an order dissolving or modifying the portion of the TRO granting Plaintiffs' request to restrain Defendant Jscout's assets and Merchant Storefront;

WHEREAS, on September 11, 2019, Plaintiffs opposed Defendant Jscout's motion;

WHEREAS, on September 18, 2019 at 10:15 a.m., counsel for Plaintiffs and Defendant Jscout appeared for a telephone conference with the Court regarding Jscout's motion;

WHEREAS, on October 25, 2019, the Court held a hearing on the preliminary injunction motion and motion to dissolve the TRO; and

WHEREAS, counsel for Defendant Jscout represents to this Court that the words "WALL CLIMBER CAR" have been removed from the owner's manual and is not using the terms "WALL CLIMBER" in any way in connection with the marketing and sale of the EpochAir "wall climbing car," ("Epoch Product").

WHEREAS, counsel for Defendant Jscout represents to this Court that Amazon disposed of (*i.e.*, destroyed) 267 of the Epoch Product and Amazon has twelve (12) units of Epoch Product in its possessions, custody or control (“Amazon Inventory”).

ORDER

1. IT IS HEREBY ORDERED, that the relief previously granted in the TRO shall be vacated, except as indicated below, applicable only with respect to Defendant Jscout, and to the extent there is a conflict or ambiguity with the TRO, the terms of this Order shall govern.

a. With regard to Paragraphs I(B)(1) – I(B)(3) of the TRO, the Third Party Service Providers and Financial Institutions Amazon, Amazon Pay and PingPong shall continue to be restrained and enjoined from:


i. secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants’ Assets that are currently restrained pursuant to the TRO from or to Defendants’ Financial Accounts.

b. With regard to Paragraphs I(B)(1) – I(B)(3) of the TRO, the Third Party Service Providers, Financial Institution Amazon, Amazon Pay, and PingPong shall no longer impose any freeze on any funds or assets received by Jscout for the sale of any products, following entry of this Order.

c. Amazon is instructed to dispose of/destroy the Amazon Inventory.

SO ORDERED.

SIGNED this 5th day of November, 2019, at _____ .m.


Vernon S. Broderick
United States District Judge